MENTERI BESAR NEGERI SEMBILAN (PEMERBADANAN)

v.

PENTADBIR TANAH DAERAH SEREMBAN & ANOR.

COURT OF APPEAL, KUALA LUMPUR
DATO' MAHADEV SHANKAR JCA
DATO' HJ. ABU MANSOR BIN ALI JCA
DATO' HJ. ABDUL MALEK BIN HJ. AHMAD J
[CIVIL APPEAL NO. N-01-17-95]
2 OCTOBER 1995

LAND LAW: *Land acquisition - Award of compensation - Objection by appellant against award - Whether appellant "a person interested" in the scheduled land - Whether appellant had to be a corporation undertaking a work of public utility - Land Acquisition Act 1960 ss. 3, 37.*

In this case some 232 hectares of the second respondent's land had been acquired by the State Authority of Negeri Sembilan for the proposed Kuala Lumpur International Airport and the new township of Nilai. Following the exercise a compensation of RM85,000 per acre was awarded by the valuer. The appellant, a statutory corporation with power to undertake ventures of a commercial nature, objected to the award on the ground that the same was excessive. The trial Judge, upon perusal of ss. 3 & 37 of the Land Acquisition Act 1960 (the Act), dismissed the appellant's objection, ruling, that although the appellant was "a person interested" as defined in the Act, the condition precedent to the making of an objection under s. 37(1) of the Act had not been satisfied. The learned Judge was also of the view that the appellant had to be a corporation undertaking a work which in the opinion of the State Authority is of public utility, and since they were not, they were not deemed a person interested under s. 37(3) of the Act.

The appellant appealed and argued before the Court of Appeal, *inter alia*, that the words "any person or corporation undertaking a work which in the opinion of the State Authority is of public utility" in s. 37(3) of the Act ought to be deleted as they are incompatible and irreconcilable with the amended s. 3(b) of the Act, which came into force on 13 September 1991. The issue that arose was whether having regard to the relevant provisions the appellant could be said to be a person interested in the scheduled land so as to lawfully enable them to make the objection in question.

Held:

Per Abdul Malek bin Hj. Ahmad J. (delivering the judgment of the Court):

[1] A proper reading of s. 3 then and now makes it clear that the State Authority acquires for itself for the purposes under paragraphs (a) and (c), but acquires on behalf of another under paragraph (b) and that is only for a person or corporation undertaking a work which in their opinion is of public utility up to 12 September 1991, and only for a person or corporation for any purpose which in the opinion of the State Authority is beneficial to the economic development of Malaysia or to the public generally after 13 September 1991.

[2] The appellant could not have come under s. 3(b) of the Act and therefore could not be a person interested in the first place. This was because in the relevant Form D, the purpose of the acquisition was stated as "for a public purpose that is the creation of the Nilai Town". The public purpose could only come under s. 3(a) of the Act and nowhere else, and this rules out the involvement of any other person or corporation on whose behalf the scheduled land is acquired by the State Authority.

Per curiam:

Sections 3(b) and 37(3) of the Land Acquisition Act 1960 are related provisions and the amendment to one should have entailed an amendment to the other. The amendment to s. 3(b) of the Act without any amendment to the latter section, as happened here, had clearly given rise to discrepancies. The learned State Legal Adviser may like to correct this by suggesting the consequential amendment to s. 37(3) of the Act.

[Appeal dismissed]

*[**Bahasa Malaysia** Translation of Headnotes]*

UNDANG-UNDANG TANAH: *Pengambilan tanah - Award pampasan - Bantahan oleh perayu terhadap award - Samada perayu "orang yang mempunyai kepentingan" dalam tanah yang dijadualkan - Samada perayu haruslah merupakan sebuah perbadanan yang melaksanakan kerja kemudahan awam - Akta Pengambilan Tanah 1960 ss. 3, 37.*

Dalam kes ini anggaran 232 hektar tanah responden kedua telah diambil oleh Pihak Berkuasa Negeri, Negeri Sembilan, bagi projek Lapangan Terbang Antarabangsa Kuala Lumpur yang dicadangkan dan bandar baru Nilai. Berikutan dengan perlaksanaan tersebut, pampasan sebanyak RM85,000 seekar telah diawardkan oleh penilai. Perayu, sebuah perbadanan berkanun yang mempunyai kuasa untuk menjalankan kerja-kerja yang bersifat komersial, telah membantah terhadap award tersebut atas alasan ianya terlalu tinggi. Hakim perbicaraan, setelah meneliti ss. 3 & 37 Akta Pengambilan Tanah 1960 (Akta tersebut), telah menolak bantahan perayu, dengan memutuskan bahawa walaupun perayu merupakan "a person interested" sepertimana yang ditakrifkan oleh Akta tersebut, satu syarat duluan bagi membuat suatu bantahan di bawah s. 37(1) Akta tersebut belum dilakukan. Hakim yang bijaksana juga berpendapat bahawa perayu haruslah merupakan sebuah perbadanan yang menjalankan kerja yang mana menurut pendapat Pihak Berkuasa Negeri merupakan kemudahan awam, dan oleh kerana perayu bukanlah sedemikian, mereka tidaklah dianggap orang-orang yang mempunyai kepentingan di bawah s. 37(3) Akta.

Perayu telah merayu dan berhujah di hadapan Mahkamah Rayuan, antara lainnya, bahawa perkataan-perkataan "any person or corporation undertaking a work which in the opinion of the State Authority is of public utility" (mana-mana orang atau perbadanan yang menjalankan kerja yang mana menurut pendapat Pihak Berkuasa Negeri merupakan kemudahan awam) dalam s. 37(3) seharusnya dipotong kerana ianya tidak bersesuaian dan bercanggah dengan s. 3(b) Akta tersebut yang dipinda, yang mana telah berkuatkuasa pada 13 September 1991. Isu yang berbangkit adalah samada menimbangkan peruntukan-peruntukan yang relevan, perayu boleh dikatakan sebagai merupakan orang yang mempunyai kepentingan dalam tanah yang dijadualkan itu bagi membolehkannya membuat bantahan yang dipersoalkan itu secara sah di sisi undang-undang.

Diputuskan:

Oleh Abdul Malek bin Hj. Ahmad J (menyampaikan keputusan Mahkamah):

[1] Tafsiran yang betul terhadap s. 3 dahulu dan kini menunjukkan dengan jelasnya bahawa pihak berkuasa Negeri membuat pengambilan untuk dirinya sendiri bagi tujuan-tujuan di bawah perenggan-perenggan (a) dan (c), tetapi mengambil bagi suatu pihak yang lain di bawah perenggan (b) dan itu hanyalah untuk seorang atau sebuah perbadanan sahaja yang menjalankan kerja yang mana menurut Pihak Berkuasa Negeri adalah benefisial kepada pembangunan ekonomi Malaysia atau kepada awam secara amnya selepas 13 September 1991.

[2] Perayu tidak tergolong di bawah s. 3(b) Akta tersebut dan dengan itu tidak boleh menjadi orang yang mempunyai kepentingan. Ini adalah kerana dalam Borang D yang relevan, tujuan pengambilan telah dinyatakan sebagai "bagi tujuan awam iaitu penubuhan Bandar Nilai". Tujuan awam tersebut hanya boleh tergolong di bawah s. 3(a) Akta tersebut dan bukan di bawah yang lain, dan ini menolak penglibatan mana-mana orang lain atau perbadanan yang lain bagi pihak yang mana tanah yang dijadualkan itu telah diambil oleh Pihak Berkuasa Negeri.

Per Curiam:

Seksyen-seksyen 3(b) dan 37(3) Akta Pengambilan Tanah 1960 adalah peruntukan-peruntukan yang berkaitan dan pindaan kepada satu akan memerlukan supaya seksyen yang lain itu dipinda juga. Pindaan kepada s. 3(b) Akta tersebut tanpa pindaan kepada seksyen yang terkemudian, sepertimana yang dilakukan di sini, telah membangkitkan perselisehan. Penasihat Undang-Undang Negeri yang bijaksana mungkin mahu membetulkan hal ini dengan menyarankan pindaan yang bersampingan dengan s. 37(3) Akta tersebut.

[Rayuan ditolak].

Legislation referred to:
Land Acquisition Act 1960, ss. 3(b), 37(1), (3)

For the appellant - Joseph Yeo (T.C. Tan with him); M/s. Raja Eleena Siew Ang & Tan
For the first respondent - Abdul Aziz bin Abdul Rahim, State Legal Adviser
For the second respondent - Robert Lazar; M/s. Shearn Delamore & Co.

JUDGMENT

Abdul Malek bin Haji Ahmad J:

As correctly stated by the learned trial Judge in his grounds of judgment, the issue for determination is whether the petitioner, now the appellant, is a person interested in the scheduled land under the Land Acquisition Act 1960 (hereinafter "the Act") and thereby may make an objection to the Collector and require him to refer to the Court as regards the amount of compensation which the appellant alleges is excessive.

The registered proprietor of the scheduled land had applied to intervene and with no objection from the parties, had been named the second respondent. They had also cross-appealed for an order that the first respondent pay the remaining twenty five per cent of the award of RM19,735,280 namely RM4,933,820, not RM4,933,748 as stated in their cross-appeal, to them together with interest effective from the date the amount was due to be paid.

The valuation report describes the scheduled land as a piece of land 232 hectares in area planted with oil palm and rubber trees situated 33 kilometres from Seremban, 20.5 kilometres from the proposed international airport at Sepang and 9 to 12 kilometres from Nilai town and Nilai Industrial Park. The valuation officer had valued the scheduled land at RM85,000 per acre.

The appellant is a statutory body with power to undertake ventures of a commercial or industrial nature independently or jointly with another company. They had objected to the amount of the award which they said was excessive. The second respondent is also dissatisfied with the amount of compensation and their objection to the Collector's award is still pending.

The term "person interested" has been defined in the Act as including every person claiming an interest in compensation to be made on account of the acquisition of land under the Act, but does not include a tenant by the month or at will. The learned trial Judge found no difficulty in deciding that the second respondent is a person interested and had allowed them to intervene. He had gone into some detail, by referring to ss. 3 and 37 of the Act, as to whether the appellant is also a person interested and had concluded by allowing the second respondent's application to intervene and dismissing the appellant's objection to the Collector's award with costs.

It is pertinent at this point to reproduce s. 3 of the Act as it was before the amendment to paragraph (b) which became effective on 13 September 1991:

> 3. The State Authority may acquire any land which is needed:
>
> (a) for any public purpose;
>
> (b) by any person or corporation undertaking a work which in the opinion of the State Authority is of public utility; or
>
> (c) for the purpose of mining or for residential, agricultural, commercial or industrial purposes.

The amendment to paragraph (b) reads as follows:

> (b) by any person or corporation for any purpose which in the opinion of the State Authority is beneficial to the economic development of Malaysia or any part thereof or to the public generally or any class of the public; or.

Section 37(3) of the Act states:

> 37. (3) Where the total amount of any award in respect of any scheduled land exceeds fifteen thousand ringgit any Government or any person or corporation undertaking a work which in the opinion of the State Authority is of public utility, and on whose behalf such land was acquired pursuant to the provisions of s. 3, shall be deemed to be a person interested in any scheduled land under the provisions of subsection (1), and may make objections on any of the grounds specified in subsection (1).

Learned Counsel for the appellant was of the view that the words "any person or corporation undertaking a work which in the opinion of the State Authority is of public utility" in s. 37(3) of the Act should be deleted as they are incompatible and irreconcilable with the amended s. 3(b) of the Act as the result was that the ambit of s. 37(3) of the Act had been greatly reduced.

The explanatory statement to the bill for the amendment of s. 3(b) of the Act, to my mind, is not of much assistance when it says, in quite a repetitive manner I might add, that:

> 2. Clause 2 seeks to amend s. 3 of the Act by substituting paragraph (b) with a wider provision which will empower the State Authority to acquire any land which is needed by any person or corporation for any purpose which in the opinion of the State Authority is beneficial to the economic development of Malaysia or to the public or any class of the public.

The learned trial Judge was of the considered opinion that the appellant was a person interested as defined under the Act but had not satisfied the condition precedent to the making of an objection under s. 37(1) of the Act which states:

> 37. (1) Any person interested in any scheduled land who, pursuant to any notice under section 10 or 11, has made a claim to the Collector in due time and who has not accepted

the Collector's award thereon, or has accepted payment of the amount of such award under protest as to the sufficiency thereof, may, subject to the provisions of this section, make objection to:

(a) the measurement of the land;

(b) the amount of the compensation;

(c) the persons to whom it is payable;

(d) the apportionment of the compensation.

The learned trial Judge was also of the view that the appellant had to be a corporation undertaking a work which in the opinion of the State Authority is of public utility, and on whose behalf such land was acquired pursuant to s. 3, and since they were not, they were not deemed a person interested under s. 37(3) of the Act.

He had also opined that with the deletion of s. 3(b) of the Act pursuant to the amendment, s. 37(3) of the Act should also have been amended the same way by deleting the words originally in the former section.

He had stated as follows:

> According to general principles of interpretation of statute where the language of a statute leads to a manifest contradiction of the apparent purpose of the enactment or to some inconvenience or absurdity which can hardly have been intended a construction may be put upon it which modifies the structure of the sentence; or where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskillness. Section 3 as amended does not empower anymore the State Authority to acquire land for a corporation undertaking work which is of public utility and therefore such corporation can no longer be the person interested who may make an objection in respect of the amount of compensation under s. 37(3) even though the section retains its right to make such objection. It is absurd to allow such corporation to object when it can no longer remain as an agent for whom the land is acquired.
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> Another general principle of interpretation of statute is this: although in construing an Act of Parliament the Court must always try to give effect to the intention of the Act and must look not only at the remedy provided but also at the mischief aimed at, it cannot add words to a statute or read words into it which are not there. The Court cannot aid the legislature's defective phrasing of an Act it cannot add and mend, and, by construction, make up deficiencies which are left there. To do so would be to usurp the function of the legislature.

He had concluded by stating:

> The provisions of s. 3(b) and the provisions of s. 37(3) are incompatible and irreconcilable. The words "any person or corporation undertaking a work which in the opinion of the State Authority is of public utility" in s. 37(3) are nugatory and may therefore be deleted. This, I believe is in accord with the principle of interpretation that the statute if allowed to remain or is not deleted will lead to manifest absurdity and the Court may remove the absurdity. It is urged upon me to substitute for the words deleted the following words: "any person or corporation for any purpose which in the opinion of the State Authority is beneficial to the economic development of Malaysia or any part thereof or to the public generally or any class of the public" which words as amended appear in s. 3(b) of the Act. To do so, I believe usurps the function of the legislature and I therefore decline it. Firstly, the words in the proposed amendment simply cannot fit in verbatim into the sentence so as to give effect to the intended meaning. Secondly, the words "in the opinion of the State Authority" in both the texts relate to two different words namely the "purpose" for which the Corporation requires the land and the "work" which the Corporation undertakes. In my view there has to be not only a structural amendment but also a substantive amendment and I

repeat this is not the function of the Court. Thirdly, the Court should not vest a right in a statute where the legislature has not vested it. To allow the Corporation to object to the Collector on the ground that the award of the Collector was excessive is to vest a right which the legislature fails to provide in the Act.

Accordingly I allow the registered proprietor's application and I dismiss the applicant's objection to the Collector's award with cost.

The learned State Legal Adviser for the first respondent had supported the appellant's appeal by reasoning that the words, "and on whose behalf such land was acquired pursuant to s. 3," with the commas at the relevant places acted as a qualifier to a corporation undertaking a work which in the opinion of the State Authority is of public utility which the appellant was.

Before we deal with the arguments of learned Counsel for the second respondent, it is worthwhile examining the discrepancies caused by the amendment to s. 3(b) of the Act without any amendment to s. 37(3) of the Act. They are in fact related provisions and the amendment to one should have entailed an amendment to the other. A proper reading of s. 3 then and now makes it clear that the State Authority acquires for itself for the purposes under paragraphs (a) and (c) but acquires on behalf of another under paragraph (b) and that is only for a person or corporation undertaking a work which in their opinion is of public utility up to 12 September 1991, and only for a person or corporation for any purpose which in the opinion of the State Authority is beneficial to the economic development of Malaysia or any part thereof or to the public generally or any class of the public after 13 September 1991. This reasoning fits in nicely with the words, "and on whose behalf such land was acquired pursuant to the provisions of s. 3," because that was what it is and should be namely that it was acquired by the State Authority on their behalf. It could have been better if they had added "(b)" after "3" as this makes it abundantly clear that the State Authority only acquires on another's behalf under paragraph (b) but never under paragraphs (a) and (c). Thus when they had decided to widen the scope under s. 3(b) of the Act, they should have likewise replaced the same words in s. 37(3) of the Act in the same manner. The learned State Legal Adviser may like to correct this by suggesting the consequential amendment to s. 37(3) of the Act in this way.

One would have thought that by doing that, the appellant would not have the present problem and they would end up as a person interested. Unfortunately for them, learned Counsel for the second respondent had pointed out that the so called inconsistencies between s. 3(b) and s. 37(3) of the Act are quite irrelevant to the appeal as the appellant would not come under s. 3(b) in the first place.

This was because, he said, in the relevant Form D for the proposed acquisition dated 19 February 1993, the purpose was "bagi tujuan awam iaitu pengwujudan Bandar Baru Nilai, Negeri Sembilan" which means "for a public purpose that is the creation of the Nilai New Town, Negeri Sembilan" which is further strengthened by paragraph 7 of the State Financial Officer's affidavit filed in support of the application that it was acquired by the State Authority for the petitioner for a public purpose. Although the words "for the petitioner" were used, this is merely a circumstantial fact but the public purpose could only come under s. 3(a) of the Act and nowhere else and this rules out the involvement of any other person or corporation on whose behalf the scheduled land is acquired by the State Authority namely the appellant.

For these reasons, we had dismissed the appellant's appeal with costs and allowed the second respondent's cross-appeal with no order as to costs and, because the appellant was not a person interested in the first place, with an order that the first respondent pay the remaining twenty five per cent balance of RM4,933,820 with interest from the date it was due and payable to the second respondent. The deposit is to account for the taxed costs of the second respondent.

Abu Mansor bin Ali JCA:

I have had the opportunity of reading the draft judgment of my brother, Dato' Haji Abdul Malek bin Haji Ahmad, J in this matter to which I concur.